



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRANSMITTAL COVER SHEET

Application Serial No: 09/593,914 Confirmation No: 8319
Date Filed: June 14, 2000
Application Title: Probes, Probe Sets, Methods And Kits Pertaining To The
Detection, Identification And/Or Enumeration Of Yeast;
Particularly In Wine
Applicants: Hyldig-Nielsen et al.
Group Art Unit: 1634
Examiner: C. Myers
Application Status: Appeal Brief On File – Supplemental Brief To Be Filed

Certificate of Mailing Pursuant to:
37 C.F.R. §1.10

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail No. ER865947104US in an Express Mail envelope addressed to: Mail Stop: Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 20th day of May, 2004.

Brian D. Gildea
Reg. No. 39,995

Commissioner for Patents
Dear Sir or Madam:

Enclosed herewith, please find the following documents and sheets.

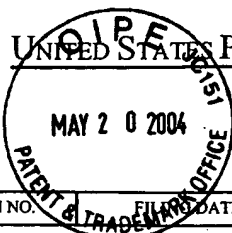
1. Copy of Newly Filed Petition under 37 C.F.R. § 1.181 pertaining to the "Notice of "Notification of Non-Compliance with 37 C.F.R. § 1.192(c)" dated April 30, 2004.
2. Summary Of Changes To The Appeal Brief
3. Supplemental Appeal Brief Filed In Triplicate.

Respectfully submitted
On behalf of Applicants,

Brian D. Gildea; Reg. No. 39,995



Exhibit A p1
UNITED STATES PATENT AND TRADEMARK OFFICE



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/593,914

06/14/2000

Jens J. Hyldig-Nielsen

BP9901US

8319

23544

7590

04/30/2004

BRIAN D. GILDEA
APPLIED BIOSYSTEMS
15 DEANGELO DRIVE
BEDFORD, MA 01730

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MAY 03 2004

APPLIED BIOSYSTEMS

EXAMINER

ART UNIT

PAPER NUMBER

DATE MAILED: 04/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



Exh. 6.1 A: p 2

**Notification of Non-Compliance
With 37 CFR 1.192(c)**

Application No.

09/593,914

Examiner

Carla Myers

Applicant(s)

HYLDIG-NIELSEN ET AL.

Art Unit

1634

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 18 February 2004 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

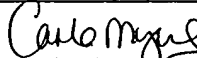
To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of the following three **TIME PERIODS**: (1) **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer; (2) **TWO MONTHS** from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. **EXTENSIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. ☐ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. ☐ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. ☐ A single ground of rejection has been applied to two or more claims in this application, and
 - (a) ☐ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
 - (b) ☐ the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. ☐ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. ☒ Other (including any explanation in support of the above items):

With respect to #2 and #8 above, the brief does not provide the correct status for each of the claims in the application. Specifically, the brief does not indicate which claims are cancelled and which claims are withdrawn (see MPEP 1206). Further the listing of the claims under appeal as set forth in the appendix is incorrect because the listing includes claim 34. Claim 34 is a withdrawn claim and is not under appeal.

Additionally, it is pointed out that the 132 Declaration filed in the after final response of August 22, 2003 has NOT been entered. Therefore, the arguments regarding the Declaration set forth on, for example, pages 11-14 and 21 of the brief, are not properly included in the brief and will not be considered.

Lastly, it is noted that the brief presents arguments regarding the restriction requirement. However, this issues relates to petitionable subject matter and not appealable subject matter. See MPEP 1002 and 1201. It is further noted that Appellant's petition of the restriction requirement was denied, as set forth in the letter of March 3, 2004.


CARLA J. MYERS
PRIMARY EXAMINER